INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	4
Specification of errors to be urged	5
Reasons for granting the writ	5
Appendix	6

CITATIONS

Cases:	
Helvering v. *British-American Tobacco Co., Ltd.*, Vol. I, Prentice-Hall, 1934, p. 885	5, 6
Statutes:	
Revenue Act of 1926, c. 27, 44 Stat. 9:	
Sec. 217 (U.S.C.App., Title 26, Sec. 958)	2
Sec. 233 (U.S.C.App., Title 26, Sec. 985)	3
Sec. 1116 (U.S.C.App., Title 26. Sec. 153)	3

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

STOCKHOLMS ENSKILDA BANK

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above-entitled case on December 4, 1933.

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 8–10) is reported in 25 B.T.A. 1328. The opinion of the Court of Appeals of the District of Columbia is reported in 68 F. (2d) 407.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered December 4, 1933

On February 26, 1934, the Chief Justice entered an order granting an extension of time for the filing of a petition for a writ of certiorari for sixty days from March 4, 1934. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether interest paid during 1927 by the United States, pursuant to Section 1116 (a) of the Revenue Act of 1926, to a foreign corporation upon an overpayment of taxes constitutes "income from sources within the United States", within the meaning of Sections 217 and 233 of the Revenue Act of 1926.

STATUTES INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

> SEC. 217. (a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States:
>
> (1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a

resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable;

* * * * *

(c) The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a); * * *. (U.S.C.App., Title 26, Sec. 958.)

SEC. 233. (b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217. (U.S.C.App., Title 26, Sec. 985.)

SEC. 1116 (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of

such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount. (U.S.C.App., Title 26, Sec. 153.)

STATEMENT

During the year 1927, Stockholms Enskilda Bank, a foreign corporation with no place of business in the United States, received from the Treasury of the United States $8,683.91 as interest upon an overpayment of Federal income and excess-profits taxes (R. 8). The Commissioner included this sum in the Bank's gross income for the year 1927, and determined a deficiency of $1,172.32 (R. 4–5). Appeal was taken to the Board of Tax Appeals where it was held that the United States is not a "resident" within the meaning of Section 217 (a) (1) of the Revenue Act of 1926, and therefore interest upon its obligations is not to be included in the gross income of a foreign corporation (R. 8–10). The Commissioner appealed to the Court of Appeals of the District of Columbia (R. 11–13), where the decision of the Board of Tax Appeals was affirmed.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals of the District of Columbia erred—

(1) In holding that the interest paid to the respondent upon the overpayment of its taxes did not constitute "income from sources within the United States", within the meaning of Sections 217 and 233 of the Revenue Act of 1926.

(2) In sustaining the decision of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT

The decision below is in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit, entered March 5, 1934, in *Helvering* v. *British-American Tobacco Co., Ltd.*, not officially reported, but printed in full as an appendix to this petition (*infra*, p. 6). The conflict is expressly recognized in the opinion in that case (see p. 9, *infra*).

The question presented is of general importance and one which, in view of the conflict, should be settled by a decision of this Court.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

MARCH 1934.

APPENDIX

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE *v.* BRITISH-AMERICAN TOBACCO COMPANY, LTD.

Opinion of the Circuit Court of Appeals for the Second Circuit, March 5, 1934

Petition by the Commissioner of Internal Revenue to review a judgment of the Board of Tax Appeals (27 B.T.A. 226). The Commissioner appeals. Judgment reversed.

Manton, Circuit Judge:

This is a petition to review a judgment entered against the Commissioner by the Board of Tax Appeals. It determined that there was no deficiency with respect to income taxes of the respondent for the years 1925 and 1926. The question presented is whether the respondent was subject to a corporation tax, with respect to interest paid to it by the government in the years 1925 and 1926, upon refunds of income and profit taxes, illegally assessed against it, in the calendar years 1917, 1918, and 1919. The interest received was $12,600.20 in 1925 and $182,832 in 1926. The overpayments were $1,394,357.64.

The corporation reported these amounts on its tax returns for the years 1925 and 1926 as nontaxable income. Therefore, was the interest paid during 1925 and 1926, by the government, to the respondent upon the overpayments of taxes, income from sources within the United States, within

the meaning of § 217 and 233 of the Revenue Act of 1926? (c. 27, 44 Stat. 9.)

Section 1019 of the Revenue Act of 1924 (c. 234, 43 Stat. 346) provides for the payment of interest at 6% on the allowance of a credit or refund of any tax erroneously collected. The Revenue Act of 1926 (c. 27, § 217 [a] 44 Stat. 30) provides:

"In the case of a nonresident alien individual * * * the following items of gross income shall be treated as income from sources within the United States:

"(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business, paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States * * *."

Section 217 (c) provides:

" The following items of gross income shall be treated as income other than that derived from sources within the United States as provided in para. (1) of subdiv. (a)."

Section 233 (b), 44 Stat. 41, provides:

"In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in § 217."

The plan of the Revenue Act indicates that the income of foreign corporations is divided into two groups—(a) that derived from sources within the United States and (b) that received from sources without the United States. The interest here in-

volved was derived from sources within the United States.

But it is argued, by the respondent, that not all such interest derived from such sources is taxable but only the interest of the types of obligation defined by the statute. It is said that the statute must be strictly construed and on the analogy of decisions limiting the application of the word "obligations" in § 213 (*U.S. Trust Co.* v. *Anderson*, 65 F. (2d) 575 [C.C.A. 2]; *Amer. Viscose Corp.* v. *Commr.*, 56 F. (2d) 1033 [10 Am. Fed. Tax. Rep. 1478] [C.C.A. 3]), it is urged that the same words in § 217 should be held not to include the statutory requirement of interest paid by the United States on refunded taxes. But the meaning given to the word used in one connection is not necessarily the meaning to be attributed to it when employed in other connections. It is a matter of legislative intent, and the legislative history of the two sections is not so nearly identical that Congress may be presumed to have intended the same thing in each. It is a fair inference that § 217 is the broader of the two. In its first form (as § 10 of the Revenue Act of 1916), it was apparently intended to extend the taxing power to situations not thought by the Attorney General (30 Opinions A.G. 455) to be included in the law as it then stood. Its present form, as indicated by the report of the Finance Committee of the Senate (Report No. 275, 67th Congress, 1st Sess. p. 16) is no retreat from that position but rather a qualification and more explicit statement of that extension. We thus have revealed a purpose to enlarge the scope of the statute. It is only in keeping with that purpose to apply the statute to the obligation involved in the instant case.

The term "obligation" includes "any duty imposed by law" (Webster's New International Dictionary), and it is well settled that the popular and accepted import of the words furnishes the

general rule for the interpretation of public laws. *Woolford Realty Co.* v. *Rose,* 286 U.S. 319, 327, 52 S.Ct. 568, 76 L.Ed. 1128 [11 Am. Fed. Tax Rep. 12]; *Old Colony R. Co.* v. *Commr.,* 284 U.S. 552, 560, 52 S.Ct. 211, 76 L.Ed. 484 [10 Am. Fed. Tax Rep. 786].

In *U.S. Trust Co.* v. *Anderson* (*supra*), we held that interest on condemnation awards was taxable as an obligation of a subdivision of a state. There is no substantial difference, in the viewpoint of taxation, between the obligation of a city to pay interest on an award and the obligation of the United States to pay interest on an overpayment of taxes, none of which were exempt later from taxation. In *American Viscose Co.* v. *Commr.* (*supra*), the tax was imposed upon a domestic corporation for interest on refunded taxes.

The question remains as to whether the United States is a resident within the meaning of § 217. The United States is a corporation. *Republica* v. *Sweers,* 1 Dall. 41, 44; *United States* v. *Maurice,* 2 Brock. (U.S.) 96, 109 (per Marshall, J.). As such corporate entity, it must have a corporate residence; that residence must be within the United States.

We are referred to *Helvering* v. *Stockholms Enskilda Bank* (Vol. 1, Prentice-Hall, 1934, ¶ 478), Court of Appeals, District of Columbia, and *State* v. *City of Trenton* (40 N.J.L. 89), as being contrary to this view. The *State* v. *City of Trenton, supra,* turned on the intent of the legislature, declared by the court to be manifest, that the debtor should not be released from taxation unless the tax could be collected from the creditor. The case at bar presents no such question. *Helvering* v. *Stockholms Enskilda Bank, supra,* rests heavily upon the determination of the New Jersey courts. We cannot agree with the prevailing opinion in saying that the United States is not a resident within the meaning of that term as used in ¶ 217.

To be taxable as income, the interest received by the respondent must be regarded as interest on "an obligation of residents, corporate or otherwise." The statute does not declare the resident must be a corporation or an individual. The words are "corporate or otherwise." This language is sufficiently broad to embrace all conceivable entities, be they sovereign, corporate, or individual. There is no difficulty with the conception that a sovereign is within the United States and it is axiomatic to say that a sovereign resides where it is sovereign.

It is unlikely that Congress was more solicitous of the welfare of foreign corporations than of domestic in the collection of taxes, and if it was the intention to regard interest paid to a domestic corporation as income, we think it did not intend to exclude a foreign corporation from the same obligation. No sufficient reason is advanced for exempting a foreign corporation when a domestic corporation is taxed. It has long been Congress' desire to extend income taxes to all forms of taxable income. *Heiner* v. *Colonial Trust Co.*, 275 U.S. 232, 235, 48 S.Ct. 65, 72 L.Ed. 256 [6 Am. Fed. Tax Rep. 7076]; *Irwin* v. *Gavit*, 268 U.S. 161, 166, 45 S.Ct. 475, 69 L.Ed. 897 [5 Am. Fed. Tax Rep. 5380]. And, indeed, it may well be said to be contrary to our nationalistic disposition to tax the one and exempt the other. It would require unmistakable language to carry conviction that Congress contemplated that corporations of foreign countries, doing business in the United States, in competition with domestic corporations and spending their incomes abroad, should be so favored.

By the Revenue Act of 1916 (c. 463, 39 Stat. 756), the legislature not only sought to make the test of taxability of foreign corporations the "source" of the income, but it definitely had in mind the ruling of the Attorney General (30 Opinions A.G. 435) that, under the 1913 Act, a foreign corporation could carry on a business in the United States with-

out being subject to a tax on income derived from stocks and bonds of a domestic corporation doing a domestic business or from obligations secured by mortgages on tangible property within the United States even though such obligations were held by such foreign corporations in the United States. Therefore it included the phrase "including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *." Thus the Congress intended an all inclusive and not restrictive taxation.

The history of the statute here in question indicates a purpose on the part of Congress to extend and make all inclusive taxes upon income or foreign corporations derived from sources within the United States. Interest on an obligation of the United States is from a source within and Congress intended to impose an income tax upon it. As said in *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1, 52 S.Ct. 275, 76 L.Ed. 587 [10 Am. Fed. Tax Rep. 800], the expression should be construed "so as to achieve and not to defeat, its (the legislature's) aim." Congress exempted from the normal tax all interest received from obligations of the United States, incurred in the borrowing of money but made a certain class thereof subject to the surtaxes and war and excess profits taxes.

A review of the history of § 236 of the Revenue Act of 1926, c. 27 (44 Stat. 43) here considered, discloses that it was enacted and reenacted as a part of § 213 and that at no time has it been considered or treated as part of § 217. It had its origin in the Revenue Act of 1918, c. 18 (40 Stat. 105). As to individuals, § 210 imposed a normal tax and § 211 imposed a surtax, while § 230 imposed a normal tax and § 301 imposed a war and excess-profits tax upon corporations. Section 213 defined the gross income of individuals and § 233 made § 213 applicable to corporations. Subdiv. b of § 213, it will be observed, does not exclude from gross income interest upon all obligations of the United States in-

curred in the borrowing of moneys. Relating to the tax upon individuals, § 216 provided that for the purpose of normal tax only there should be allowed credits (b) "The amount received as interest upon obligations of the United States * * * which is included in gross income under § 213." Section 236 contained a similar provision with respect to normal tax upon corporations. Thus there was exempted by Congress, both as to individuals and corporations, from the normal tax, all interest received from obligations of the United States incurred in the borrowing of money, but it made a certain class thereof subject to surtax and war and profits taxes. War and profits taxes were carried forward in the Revenue Act of 1921, § 301, c. 136 (42 Stat. 272) for the year 1921 only, and §§ 213, 216, and 236 were carried forward without substantial change. The war and excess-profits tax was in effect for the year 1921 and no longer. The provisions of §§ 213, 216, and 236 were without limitation and were subsequently carried forward into the Revenue Act of 1924, c. 234 (43 Stat. 253) and 1926. So far as corporations are concerned, §§ 213, 233, and 217 of the 1924–1926 Acts includes in "gross income" interest upon certain of the bonds of the United States issued in the borrowing of money, and § 236 takes it out. Congress, we think, used the word "obligations" in § 236 in reference to those obligations the interest upon which it specifically included in gross income.

The history of this taxation statute warrants the approval of construction which results in consistency and which should be accepted, making this, a foreign corporation, taxable as a domestic corporation has been held to be taxable. *American Viscose Corp.* v. *Commr., supra.*

Judgment reversed.

U. S. GOVERNMENT PRINTING OFFICE: 1934